

**Introduced by Senator Runner  
(Coauthor: Senator Correa)**

February 19, 2010

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An act to amend Section 243.9 of the Penal Code, relating to peace officers.

LEGISLATIVE COUNSEL'S DIGEST

SB 1419, as introduced, Runner. Peace Officers: gassing.

Existing law provides that every person confined in any local detention facility who commits a battery by gassing upon the person of any peace officer, as defined, or employee of the local detention facility is guilty of aggravated battery and shall be punished by imprisonment in a county jail or by imprisonment in the state prison for two, three, or four years.

This bill would broaden the scope of application of this offense by providing that it is aggravated battery, punishable as specified above, for any person to commit battery by gassing upon the person of any peace officer. By broadening the scope of application of an existing crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

SECTION 1. Section 243.9 of the Penal Code is amended to read:

243.9. (a) *Every person who commits a battery by gassing upon the person of any peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, is guilty of aggravated battery and shall be punished by imprisonment in a county jail or by imprisonment in the state prison for two, three, or four years.*

(b) Every person confined in any local detention facility who commits a battery by gassing upon the person of any peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, or employee of the local detention facility is guilty of aggravated battery and shall be punished by imprisonment in a county jail or by imprisonment in the state prison for two, three, or four years.

~~(b)~~

(c) For purposes of this section, “gassing” means intentionally placing or throwing, or causing to be placed or thrown, upon the person of another, any human excrement or other bodily fluids or bodily substances or any mixture containing human excrement or other bodily fluids or bodily substances that results in actual contact with the person’s skin or membranes.

~~(e)~~

(d) (1) The person in charge of the local detention facility shall use every available means to immediately investigate all reported or suspected violations of subdivision-~~(a)~~ (b), including, but not limited to, the use of forensically acceptable means of preserving and testing the suspected gassing substance to confirm the presence of human excrement or other bodily fluids or bodily substances. If there is probable cause to believe that the inmate has violated subdivision-~~(a)~~ (b), the chief medical officer of the local detention facility, or his or her designee, may, when he or she deems it medically necessary to protect the health of an officer or employee who may have been subject to a violation of this section, order the inmate to receive an examination or test for hepatitis or tuberculosis or both hepatitis and tuberculosis on either a voluntary or involuntary basis immediately after the event, and periodically thereafter as determined to be necessary by the medical officer in

1 order to ensure that further hepatitis or tuberculosis transmission  
2 does not occur. These decisions shall be consistent with an  
3 occupational exposure as defined by the Center for Disease Control  
4 and Prevention. The results of any examination or test shall be  
5 provided to the officer or employee who has been subject to a  
6 reported or suspected violation of this section. Nothing in this  
7 subdivision shall be construed to otherwise supersede the operation  
8 of Title 8 (commencing with Section 7500). Any person performing  
9 tests, transmitting test results, or disclosing information pursuant  
10 to this section shall be immune from civil liability for any action  
11 taken in accordance with this section.

12 ~~(d)~~

13 (2) The person in charge of the local detention facility shall  
14 refer all reports for which there is probable cause to believe that  
15 the inmate has violated subdivision~~-(a)~~ (b) to the local district  
16 attorney for prosecution.

17 (e) Nothing in this section shall preclude prosecution under both  
18 this section and any other provision of law.

19 SEC. 2. No reimbursement is required by this act pursuant to  
20 Section 6 of Article XIII B of the California Constitution because  
21 the only costs that may be incurred by a local agency or school  
22 district will be incurred because this act creates a new crime or  
23 infraction, eliminates a crime or infraction, or changes the penalty  
24 for a crime or infraction, within the meaning of Section 17556 of  
25 the Government Code, or changes the definition of a crime within  
26 the meaning of Section 6 of Article XIII B of the California  
27 Constitution.